Supreme Court, U.S.
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No. 788

In the Supreme Court of the United States

October Term, 1970

HERBERT CHARLES PETLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 353

HERBERT CHARLES PETLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted in the Central District of California of concealing and facilitating the transportation of unlawfully imported hashish in violation of 21 U.S.C. 176a, and was sentenced to imprisonment for five years and six months. The court of appeals affirmed the conviction with an opinion which sets forth the circumstances under which the hashish was found in petitioner's baggage after he had made a trip to the Orient (Pet. App.).

The case was tried before the decision in *Leary* v. *United States*, 395 U.S. 6, which held unconstitutional

the statutory presumption of knowledge of unlawful importation arising from possession. The court of appeals held that, in the circumstances of this case, incorporation of the presumption in the judge's charge was harmless beyond a reasonable doubt. It said that "a finding by the jury that appellant knowingly possessed the hashish would, *ipso facto*, establish appellant's knowledge of the illegal importation since it was appellant himself who was attempting to bring the hashish into the United States" (Pet. App. 4). The logic of this analysis seems to us self-evident. A similar issue as to harmless error is before this Court in *Vansant* v. *United States*, No. 5182, Misc., and *Matalon* v. *United States*, No. 5298, Misc., this Term.

Petitioner's claim that he would have incriminated himself by a customs declaration that he was bringing in marihuana has consistently been rejected. See *Witt* v. *United States*, 413 F. 2d 303 (C.A. 9), certiorari denied, 396 U.S. 932; *United States* v. *Reyes-Meza De Polanco*, 422 F. 2d 1304 (C.A. 9), certiorari denied May 4, 1970, No. 1879, Misc., Oct. Term, 1969. If he had made the declaration required of all travelers as to merchandise brought aboard, the hashish would have been confiscated before it was entered.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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